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10/667,695	09/22/2003	Dario Toledo	2272/025	9243

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/667,695

Applicant(s)

TOLEDO, DARIO

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-8, 12, 17-34, 42, 44, 49, 51 and 52 is/are rejected.
- 7) ☒ Claim(s) 9-11, 13-16, 35-41, 43, 45-48, 53 and 54 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Claim Objections***

Claims 13-16 and 21-22 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 13 depends on claim 14; however, claim 14 has not yet been introduced. And, claim 21 depends upon itself. It is believed that claim 21 should depend upon claim 20 and had been examined as such until further notice. Hence, claims 13-16 have not been considered in this action.

Regarding claim 20, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 49 recites the limitation "said strap" in line 1. There is insufficient antecedent basis for this limitation in the claim. Until further clarification, the claim is being read as depending upon claim 49 and not claim 50. The examiner believes this was a typographical error.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2,6,12,17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #4,632,138 to IRWIN. IRWIN discloses the use of a security apparatus (10) including a section of material (12) having two sides, a plurality of edges (32), a top and a bottom (both unlabeled); an access means (14'); a plurality of coupling members (40) connected to the material (12); and a plurality of attachment members (42,43) connected to the coupling members (40) and vertical/horizontal supports (21/22); wherein the attachment members (42,43) permit fastening and unfastening only from one side of the material (12), see figure 4. In reference to claim 6, the access means (14') comprises an opening in the material (12), see figure 1. Regarding claim 12, the coupling members (40) are disposed at or near the edges of the material (12), see figure 4. In reference to claim 17, the attachment members (42) are hooks, column 6, line 7. Regarding claim 19, the attachment members (42,43) are hook and thistle fasteners, column 6, lines 5-8.

Claims 29,30,42,44,49 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #4,632,138 to IRWIN. IRWIN discloses the use of a security apparatus (10) including a section of material (12), a plurality of pairing members (13), an access means (14'), and a plurality of fastening members (40) connected to the material (12) and connected to the coupling members (40) and vertical/horizontal supports (21/22); wherein the fastening members (40) permit fastening and unfastening only from one side of the material (12), see figure 4. Regarding claim 30, the supports (20,21) are tubular beams. In reference to claim 42 and 44, the securing means (40) are flaps (41)

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that "hang" at the borer of the material (12) from a cross bar (20). . Regarding claims 49 and 50, the pairing members (13) are straps that form loops, see figure 4.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3,4 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN. IRWIN discloses the basic claimed apparatus except for explicitly detailing that the material section is tear-resistant or KELVAR, and except for disclosing that the attachment members are hangers. Regarding claim 3, although IRWIN does not detail that his material is "tear-resistant", he does; however, discloses that it is nylon, plastic or canvas. It would have been obvious to one having ordinary skill in the art that these materials are normally "tear resistant" due to the fact that it requires a cutting

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device in order to separate. In reference to claim 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a known material on the basis of its suitability of the use intended as an obvious matter of design choice. If heat or fire is a factor in the design of the apparatus perhaps KELVAR is a suitable material; however, if it is not then any suitable material would suffice. Regarding claim 18, IRWIN does not teach the use of "hangers" per se; however, the attachment members (40) are in the form of flaps/strips that "hang" over the supports (20). Furthermore, IRWIN discloses the use of ties that would also "hang" over the supports (20). Hence, the applicant has shown no criticality for hangers as opposed to hooks.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,680,893 to NEER. IRWIN discloses the basic claimed apparatus except for explicitly detailing that his material is opaque. NEER does not explicitly detail "opaque"; however, he does teach that it is known in the art to use camouflaged but light transmissive material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the section material of IRWIN out of the opaque material of NEER in order to enable a user to see out but while allowing selective amounts of light there through.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,010,909 to CLEVELAND. IRWIN discloses the basic claimed apparatus except for the use of a zippered access. Regarding claim 7, CLEVELAND teaches that it is known

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in the art to provide a security apparatus (10) with a zippered access (26,28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of IRWIN with a zippered access in order to more secure close off the apparatus from external influences. In reference to claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the zippered access allow people to enter and exit.

Claims 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,680,893 to NEER. IRWIN discloses the use of a security apparatus (10) including a section of material (12) having two sides, a plurality of edges (32), a top and a bottom (both unlabeled); an access means 914'; a plurality of securing means (40) connected to the material (12); and a plurality of attachment members (42,43) connected to the securing means (40) and vertical/horizontal supports (21/22); wherein the attachment members (42,43) permit fastening and unfastening only from one side of the material (12), see figure 4. Regarding claim 21, IRWIN discloses the basic claimed apparatus except for explicitly detailing that his material is opaque. NEER does not explicitly detail "opaque"; however, he does teach that it is known in the art to use camouflaged but light transmissive material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the section material of IRWIN out of the opaque material of NEER in order to enable a user to see out but while allowing selective amounts of light there through. In reference to claim 22, it would have

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been obvious to one having ordinary skill in the art at the time the invention was made to select a known material on the basis of its suitability of the use intended as an obvious matter of design choice. If heat or fire is a factor in the design of the apparatus perhaps KELVAR is a suitable material; however, if it is not then any suitable material would suffice. Regarding claim 23, the selective securing means is an article (41) that forms an "opening" that allows for attachment to the supports (20,21), see figure 4, and is attached to the material (12), column 6, line 5-6. In reference to claims 24 and 25, the securing means is an article (41) is a strap that ultimately forms a loop, column 6, lines 5-6, see figure 4. Regarding claim 26 and 27, IRWIN does not teach the use of "rings" per se'; however, the securing means (40) are in the form of flaps/strips that "hang" over the supports (20). IRWIN also details that his securing means may be grommets, column 6, line 21, and grommets are rings. The applicant has shown no criticality for hangers or straps as opposed to rings or grommets. In reference to claim 28, the securing means (41) are attached to the section material (12), column 6, lines 5-6.

Claims 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN. IRWIN discloses the basic claimed apparatus except for explicitly detailing that the beam/pole is extruded; except for explicitly detailing that the fastening member may be tightened; by hand or held with a finger. Regarding claim 31, IRWIN does not detail "extruded" per se'; however, he does detail aluminum and plastic. Both of these materials are very well known for being extruded. In reference to claims 32-34, IRWIN details that



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his fastening members (40) may be ties, column 6, line 53. Ties are very well known for being capable of being tightened by hand and by grasping the ends of the tie with the finger.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,632,138 to IRWIN in view of US Patent #5,010,909 to CLEVELAND. IRWIN discloses the basic claimed apparatus except for the use of a zippered access. CLEVELAND teaches that it is known in the art to provide a security apparatus (10) with a zippered access (26,28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of IRWIN with a zippered access in order to more secure close off the apparatus from external influences.

#### ***Allowable Subject Matter***

Claims 9-11,35-41,43,45-48 and 53-54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YMH  
11/1/04



Yvonne M. Horton  
Examiner  
Art Unit 3635